

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

OWENS CORNING, et al., . Case No. 04-CV-905
 .
 . Plaintiffs, .
 v. . 601 Market Street
 . Philadelphia, PA 19106
 CREDIT SUISSE FIRST BOSTON, .
 et al., .
 .
 . Defendants.. January 19, 2005
 9:59 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JOHN P. FULLAM
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

Special Counsel for
the Debtors:

Debevoise & Plimpton, LLP
By: ROGER E. PODESTA, ESQ.
919 Third Avenue
New York, New York 10022-3904

Skadden Arps
By: D.J. BAKER, ESQ.
Four Times Square
New York, New York 10036

Skadden Arps
By: MARK S. CHEHI, ESQ.
DAVID R. HURST, ESQ.
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899

Audio Operator: Michael Baker

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DIANA DOMAN TRANSCRIBING
P. O. Box 129
Gibbsboro, NJ 08026
Office: (856) 435-7172
Fax.: (856) 435-7124
E-Mail: Dianadoman@comcast.net

APPEARANCES (CONTINUED):

Counsel for the Debtors:

Saul Ewing LLP
By: HENRY ABRAMS, ESQ.
CHARLES O. MONK, ESQ.
100 South Charles Street
Baltimore, Maryland 21202-2773

Saul Ewing LLP
By: NORMAN L. PERNICK, ESQ.
J. KATE STICKLES, ESQ.
222 Delaware Avenue
P.O. Box 1266
Wilmington, Delaware 19899-1266

For the U.S. Trustee:

Office of the U.S. Trustee
By: FRANK J. PERCH, III, ESQ.
Federal Bldg., 2nd Floor
844 King Street
Wilmington, Delaware 19801

ACC Estimation Counsel:

DeHay & Elliston, LLP
By: GARY D. ELLISTON, ESQ.
901 Main Street, Suite 3500
Dallas, Texas 75202-3736

DeHay & Elliston, LLP
By: R. THOMAS RADCLIFFE, ESQ.
36 S. Charles Street, Suite 1300
Baltimore, Maryland 21201

For the Official Committee
of Asbestos Claimants:

Caplin & Drysdale, Chartered
By: ELIHU INSELBUCH, ESQ.
399 Park Avenue
New York, New York 10022-4614

Caplin & Drysdale, Chartered
By: PETER VAN N. LOCKWOOD, ESQ.
NATHAN FINCH, ESQ.
RITA TOBIN, ESQ.
One Thomas Circle, N.W.
Washington, DC 20005-5802

Campbell & Levine, LLC
By: MARK HURFORD, ESQ.
MARLA ROSOFF ESKIN, ESQ.
800 King Street, Suite 300
Wilmington, Delaware 19801

APPEARANCES (Cont'd):

Legal Representative to
Claimants:

The Law Office of James J. Future
McMonagle
By: JAMES J. McMONAGLE, ESQ.
24 Walnut Street
Chagrin Falls, Ohio 44022

Counsel for Future
Representative:

Kaye Scholer LLP
By: MICHAEL J. CRAMES, ESQ.
425 Park Avenue
New York, New York 10022

Counsel for Future
Representative:

Young Conaway Stargatt & Taylor,
LLP
By: JAMES L. PATTON, JR., ESQ.
EDWIN J. HARRON, ESQ.
SHARON M. ZEIG, ESQ.
1000 West Street, 17th Floor
Wilmington, Delaware 19899-0391

Counsel for Credit Suisse
First Boston:

Landis Rath & Cobb LLP
By: ADAM G. LANDIS, ESQ.
RICHARD S. COBB, ESQ.
REBECCA BUTCHER, ESQ.
919 Market Street, Suite 600
Wilmington, Delaware 19810

Counsel for Credit Suisse
First Boston:

Kramer Levin Naftalis & Frankel
LLP
By: KENNETH H. ECKSTEIN, ESQ.
ELLEN NADLER, ESQ.
JEFFREY S. TRACHTMAN, ESQ.
919 Third Avenue
New York, New York 10022

Counsel for Credit Suisse
First Boston:

Weil, Gotshal & Manges, LLP
By: RICHARD A. ROTHMAN, ESQ.
MARTIN J. BIENENSTOCK, ESQ.
ADAM STROCHAK, ESQ.
PETER M. FRIEDMAN, ESQ.
767 Fifth Avenue
New York, New York 10153 For

Counsel for Credit Suisse
First Boston:

The Law Office of Ralph Miller
By: RALPH MILLER, ESQ.
100 Crescent Court, Suite 1300
Dallas, Texas 75201-6980

APPEARANCES (Cont'd):

Counsel for Credit Suisse
First Boston:

Weil Gotshal & Manges, LLP
By: DAVID A. HICKERSON, ESQ.
1501 K Street, Suite 100
Washington, DC 20005

Counsel for Unsecured
Creditors' Committee:

Davis Polk & Wardwell
By: STEPHEN H. CASE, ESQ.
450 Lexington Avenue
New York, New York 10017

Counsel for the Unsecured
Creditors' Committee:

Morris, Nichols, Arsht & Tunnell
By: ERIC D. SCHWARTZ, ESQ.
1201 N. Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347

Counsel for the Bondholders/
Trade Creditors:

Anderson Kill & Olick, P.C.
By: J. ANDREW RAHL, JR., ESQ.
1251 Avenue of the Americas
New York, New York 10020

Special Counsel for the
Bondholders/Trade Creditors:

Monzack and Monaco, PA
By: FRANCIS A. MONACO, JR., ESQ.
400 Commerce Center
1201 Orange Street
Wilmington, Delaware 19899

Counsel for Bondholders:

Strook & Strook & Lavan
By: LEWIS KRUGER, ESQ.
KENNETH PASQUALE, ESQ.
1809 Maiden Lane
New York, New York 10038-4982

Counsel for Bondholders:

Duane Morris LLP
By: CHRISTOPHER M. WINTER, ESQ.
RICHARD RILEY, ESQ.
1100 N. Market Street
Suite 1200
Wilmington, Delaware 19801

Counsel for Century
Indemnity:

White & Williams, LLP
By: LINDA M. CARMICHAEL, ESQ.
824 N. Market St., Suite 902
Wilmington, Delaware 19899-0709

APPEARANCES (Cont'd):

Counsel for Century
Indemnity:

O'Melveny & Myers, LLP
By: TANCRED V. SCHIAVONI, ESQ.
GERALD A. STEIN, ESQ.
ROBERT WINTER, ESQ.
Time Square Tower
7 Times Square
New York, New York 10036

Counsel for Kensington
International Ltd.,
Springfield Associates LLC
& Angelo Gordon & Co. L.P.:

Stutman, Treister & Glatt
By: ISAAC M. PACHULSKI, ESQ.
K. JOHN SHAFER, ESQ.
1901 Avenue of the Stars
12th Flor
Los Angeles, California 90067

Counsel for Kensington
International Ltd.,
Springfield Associates LLC
& Angelo Gordon & Co. L.P.:

Potter, Anderson & Corroon LLP
By: DAVID J. BALDWIN, ESQ.
LAURIE SELBER SILVERSTEIN,
ESQ.
Hercules Plaza
1313 N. Market Street
Wilmington, Delaware 19899-0951

I N D E X

	<u>PAGE</u>
<u>WITNESSES FOR CSFB</u>	
LESTER BRICKMAN	
Direct Examination by Mr. Hickerson	14
FREDERICK C. DUNBAR	
Direct Examination by Mr. Miller	34
 <u>EXHIBITS</u>	 <u>ID.</u> <u>EVD.</u>
Ex. 6 Report by Dr. Friedman	9
Ex. 86 -	
Ex. 106 Documents	9
Ex. 206 Document	9
Ex. 149 Expert Report	11
Ex. 150 Supplemental Report	11
Ex. 289 Table - NERA Forecast	37
Ex. 290 Document	37
Ex. 294 Document	37

1 THE CLERK: Court is now in session.

2 THE COURT: Good morning, everybody.

3 COUNSEL: Good morning, Your Honor.

4 THE COURT: Be seated, please. Try to stay warm.

5 Somebody have any more evidence to present?

6 MR. HICKERSON: Yes, Your Honor. Good morning.

7 David Hickerson for CSFB. Our next witness is Dr. Gary

8 Friedman. As we discussed on Monday we have prepared a short

9 29-minute excerpt from his deposition. I've conferred with

10 counsel for the debtors. They have prepared also a 29-minute

11 excerpt to show, as a cross, as it were, and I'd propose, with

12 the Court's permission --

13 THE COURT: So, that's a total of 58 minutes?

14 MR. HICKERSON: 58 minutes. Yes, Your Honor.

15 THE COURT: Fire away.

16 (Video deposition of Dr. Gary Friedman played)

17 MR. HICKERSON: Pass the witness.

18 MS. HOGAN: Mary Beth Hogan for the debtors. We

19 would now like to present the plan proponents' counter

20 designations of Dr. Friedman's depositions.

21 THE COURT: And if you would like to, why don't you

22 do that?

23 (Video deposition of Dr. Gary Friedman played)

24 MR. HICKERSON: Your Honor, the parties have prepared

25 designations for Dr. Friedman's deposition transcript, and I'd

1 like to hand them up now.

2 THE COURT: Of what I just listened to?

3 MR. HICKERSON: Your Honor, this is actually
4 designations from the entire transcript. What you saw were
5 excerpts from what each party had designated. This is the
6 entire transcript with each party's complete designations.

7 THE COURT: What I'm trying to find out is, is there
8 anything in here that I need to read other than what I've just
9 heard?

10 MR. HICKERSON: Well, Your Honor, from our point of
11 view we selected what we thought were the most important parts.
12 We would still like to present the entire designation to the
13 Court for your use --

14 THE COURT: Okay. In other words, the designation
15 goes beyond what I heard?

16 MR. HICKERSON: That's correct, Your Honor.

17 THE COURT: Thank you.

18 MR. HICKERSON: In addition, Your Honor, I would like
19 to hand up and move into Evidence certain exhibits that were
20 identified by Dr. Friedman --

21 THE COURT: Go right ahead.

22 MR. HICKERSON: -- at his deposition. These are
23 Exhibit Number 6, which was Dr. Friedman's report --

24 THE COURT: Right.

25 MR. HICKERSON: Exhibits 86 through 106 are documents

1 that were identified by Dr. Friedman during his deposition, and
2 Exhibit 203, as a page from the appendices to his report which
3 identifies the doctors in the report. I'd like to move all
4 those into Evidence.

5 THE COURT: They will be received.

6 MR. HICKERSON: One point with respect to those
7 exhibits, Your Honor, is that we have previously marked for
8 Identification as had the plan proponents certain of those
9 exhibits which contained highly confidential designations
10 because they contain names and social security numbers. The
11 versions we've handed up have redacted out those names and
12 social security numbers.

13 THE COURT: Glorious.

14 MR. HICKERSON: Your Honor, we also have a videotape
15 of the entire designated portion, or the 30-minute version, if
16 you'd like us to provide them to you we'd be happy to do so.

17 THE COURT: No. Thank you.

18 MR. HICKERSON: The next witness is Professor Lestor
19 Brickman.

20 THE COURT: Before he starts, can somebody enlighten
21 me as to whether there were any consequences to the allegation
22 that some of the pulmonary function testing equipment wasn't
23 any good?

24 MR. HICKERSON: Your Honor, I --

25 THE COURT: Did any changes occur?

1 MR. HICKERSON: What I know is that Dr. Friedman
2 testified at his deposition that on some occasions he worked
3 with the pulmonary function testing labs, but other than that I
4 have no information.

5 THE COURT: No, I heard what he said. My question
6 is, does anybody know whether anything happened as a result?

7 MR. HICKERSON: I have no further information on
8 that.

9 THE COURT: Okay. Go ahead with whatever your next
10 witness is.

11 MR. INSELBUCH: Well, Your Honor, there has been
12 evidence submitted even by Dr. Friedman, to the extent that
13 when he reported back to Owens Corning on this small sliver of
14 cases he looked at, that, for example -- what was the name of
15 the law firm?

16 UNIDENTIFIED ATTORNEY: Foster and Sears.

17 MR. INSELBUCH: Foster and Sear, they renegotiated
18 their contract.

19 THE COURT: I understand that. Yes. But has any
20 change been made in the equipment for any other test?

21 MR. INSELBUCH: I don't know.

22 THE COURT: Okay. You had a witness somewhere
23 floating about?

24 MS. HOGAN: David, before you start I would just
25 direct the Court's attention. There's an exhibit in the

1 Dr. Friedman binder which is a -- I'll get the number for you.
2 I'll tell your clerk. I don't have it handy. But it's a long
3 explanation that he provided of his -- what you heard about
4 briefly about the mechanics of a PFT machine, and it had to do
5 with the Williams and Bailey law firm. And he worked -- we
6 actually worked with Williams and Baily law firm to correct
7 that problem with the machinery company.

8 THE COURT: Was it a problem that tended to cause
9 over-reading or under-reading of the test? Does anybody know?

10 MS. HOGAN: I actually don't know whether it was
11 over-reading or under-reading.

12 THE COURT: Has the witness been sworn?

13 COURT OFFICER: Please raise your right hand.

14 LESTER BRICKMAN, CSFB WITNESS, SWORN

15 COURT OFFICER: Please state and spell your name for
16 the record.

17 MR. BRICKMAN: My name is Lester Brickman, L-e-s-t-e-
18 r, B-r-i-c-k-m-a-n.

19 MR. HICKERSON: Your Honor, I'd like to hand up some
20 exhibits that we may use with the witness.

21 THE COURT: I was afraid of that. Thank you.

22 MR. HICKERSON: Your Honor, Professor Brickman's
23 expert report is at Tab 149, and his supplemental report as
24 Exhibit 150. His C.V. is attached at the end of Exhibit 149.

25 THE COURT: All of that will be received.

1 MR. FLYNN: Your Honor? With respect to this
2 particular witness, the plan proponents do have specific
3 objections both to the admission of his report and to his
4 intended testimony. If I may address the Court briefly?

5 THE CLERK: Counsel, could you identify yourself for
6 the record?

7 MR. LYNN: My name is Michael Lynn, for the future
8 claims representative.

9 THE COURT: Well, we won't receive the whole report
10 without hearing your objections at some point.

11 MR. LYNN: Would you like to hear it now?

12 THE COURT: Never ask me what I would like.

13 (Laughter)

14 THE COURT: I would like you all to go away, but --

15 (Laughter)

16 THE COURT: Yes. Go ahead. Tell us what the problem
17 is.

18 MR. LYNN: Thank you, Your Honor. Your Honor,
19 Professor Brickman is intending to testify as an expert on
20 American law. He's intending to testify about judicial
21 decisions concerning asbestos litigation, various procedural
22 methods used by State and Federal Courts to manage their
23 dockets, tort reform legislation in Ohio, Texas, Mississippi,
24 and Illinois. There's no such thing as an expert on American
25 law. Your Honor is the only legal expert in this proceeding.

1 Professor Brickman's report and testimony also does not offer
2 the Court anything that it couldn't get from reading the bank's
3 pretrial brief.

4 THE COURT: That has been true of virtually every bit
5 of evidence that I've heard in this hearing. And I tried to
6 point out to counsel at the very beginning that they could
7 simply get all this -- make all this record by -- then I would
8 be interested in hearing their -- reading their briefs and
9 hearing their arguments, but no, we have to belabor this.

10 MR. LYNN: Your Honor, significantly, in October of
11 2003, in another asbestos bankruptcy case, the Bankruptcy Judge
12 in that case ruled that Professor Brickman could not testify on
13 the meaning of various provisions of the Bankruptcy Code, on
14 case law, and on the substance of legislative history. We have
15 a copy of that decision, if I could hand it up to you?

16 THE COURT: I don't really care. Objection is
17 overruled. We'll hear anything they want to present.

18 MR. LYNN: Thank you, Your Honor.

19 THE COURT: Okay. Thank you. I will take it as a
20 form of an oral version of a brief to the extent that it
21 discusses law. Go ahead.

22 MR. HICKERSON: Your Honor, we will try to be very
23 brief. At this point I would move Exhibits 149 and 150 into
24 Evidence.

25 THE COURT: I just received them. For whatever they

Brickman - Direct

14

1 are worth we can argument about later.

2 MR. HICKERSON: Your Honor, if I could just -- I will
3 just briefly summarize Professor Brickman's experience from his
4 C.V. He's a Professor of Law at Cardoza University. He's
5 published a number of articles on asbestos litigation. He's
6 been -- he's provided scholarships in this area over the past
7 15 years. He's testified before the United States Congress.
8 He's testified before the Ohio State Senate.

9 THE COURT: Do you think testifying before Congress
10 is a big recommendation?

11 MR. HICKERSON: I'm sorry. Maybe -- if you'd like me
12 to inquire of the witness I'd be happy to do so.

13 THE COURT: Everybody who testifies before Congress
14 is to be believed, I gather. I assume it's all in his --

15 MR. HICKERSON: Yes, it is, Your Honor.

16 THE COURT: I have it, and let's hear what he has to
17 say.

18 MR. HICKERSON: Okay.

19 DIRECT EXAMINATION

20 BY MR. HICKERSON:

21 Q Professor Brickman, can you briefly describe for the Court
22 what you've done in your research on the topic of asbestos
23 litigation?

24 A Yes. I've devoted 14 years, approximately, to a systemic
25 study of asbestos litigation. In the course of that study I

Brickman - Direct

15

1 have read case decisions. I have read Appellate opinions. I
2 have read deposition testimony, transcripts, trial transcripts.
3 I've attended some trials. I have inquired of -- I have
4 attended conferences. I have participated as an invited member
5 of conferences to speak at the conferences dealing with
6 asbestos litigation. As noted, I've been invited by
7 Congressional staff to testify before hearings of the Congress
8 on asbestos litigation issues. I have been invited to
9 conferences where I've delivered talks based upon research I've
10 done. I've published four articles to this point on asbestos
11 litigation. I have a fifth that is in the process of
12 completion on ethical issues raised by asbestos litigation.

13 I was asked early in my career, so to speak, in terms of a
14 scholar focusing on asbestos litigation by the Administrative
15 Conference of the United States, which is a federal executive
16 office agency to organize a colloquy to discuss a proposal that
17 they asked me to prepare of an administrative alternative to
18 asbestos litigation. I organized that colloquy. I invited the
19 leading asbestos lawyers, judges, and others to attend that
20 colloquy. The results were published in a symposium issue of
21 the Cardoza Law Review. Two of the articles were my own -- one
22 the actual proposal that I devised that was the subject of the
23 colloquy, the other a reflection of what information I had
24 acquired and the systemic research I had done on asbestos
25 litigation. These are some of the activities that I have

Brickman - Direct

16

1 engaged in over the last 14 years. I've devoted a substantial
2 part of my academic career over the last 14 years to research
3 into asbestos litigation.

4 Q Now, Professor, in your expert report you refer to
5 something called the entrepreneurial model. And one aspect of
6 that you refer to as mass screenings. Can you tell us what
7 your research on mass screenings has shown?

8 A Yes. In the most recent article I published, which was in
9 the Pepperdine Law Review earlier in 2004, I reflected the
10 results of an extensive research inquiry into mass screenings.
11 I accumulated every piece of literature I could find. Most of
12 this was in the form of deposition transcripts in various
13 personal injury cases involving asbestos where the screening
14 enterprise principals, the technicians they employed, and the B
15 Readers that were associated with them were deposed. I looked
16 at other documents.

17 There were newspaper reports, whatever documentary
18 evidence I could put together, and I ended up writing an
19 extensive description of mass screenings. These are screening
20 enterprises hired by plaintiff lawyers to screen so far
21 hundreds of thousands of potential litigants, starting
22 somewhere around mid-1985, with the tire workers' screenings,
23 which Judge Patrick Kelly of U.S. District Court in Kansas City
24 characterized as essentially a fraudulent process where they
25 found asbestosis, or an asbestos-related disease, in 65 percent

Brickman - Direct

17

1 of those screened.

2 I learned that the screening models that followed
3 essentially followed the same model. There are approximately
4 15 screening enterprises that have arisen. They are all paid
5 by plaintiff lawyers to go out to various locations, local
6 union halls, motel parking lots. There's a substantial amount
7 of advertising that precedes them, inviting former workers to
8 come and be screened. The letters that go out indicate health
9 risks, also indicate potential financial benefits.

10 The screening is actually done using a mobile x-ray van,
11 that is a truck, sometimes called an exam mobile, which
12 contains x-ray equipment and x-rays are administered on an
13 assembly line basis, one every five, six, seven minutes, and
14 they might screen, depending upon the size of the truck, they
15 might screen two, three hundred workers a day.

16 Q Has your research allowed you to draw any conclusions as
17 to approximately what percentage of all non-malignant cases
18 come from mass screenings?

19 A Yes. On the basis of reports and documents prepared
20 mainly by the Manville trust and David Austern in his capacity
21 as president of their -- of an arm of the trust, well in excess
22 of 90 percent of all non-malignant claims are generated by
23 screenings.

24 THE COURT: Well, I assume that's because until --
25 unless there were screenings people wouldn't realize they had

Brickman - Direct

18

1 an occasion to worry about anything?

2 THE WITNESS: For most of the persons screened that's
3 correct, because these are asymptomatic persons. They had no
4 conception of illness. Indeed, either before or after the
5 screening, they did not have it.

6 THE COURT: And I take it you do not think that these
7 screenings are simply an outgrowth of a very valid public
8 health concern on the part of lawyers? They want to straighten
9 out the population?

10 THE WITNESS: I -- in my writings I have
11 distinguished medical screenings which do provide a valuable
12 service for workers and other that are screened, and asbestos
13 screenings which have no purported health benefit. Indeed, the
14 screening principals themselves have testified that there is no
15 health benefit. There's no doctor-patient relationship. They
16 do not communicate the results of the screenings to the
17 litigants that are screened. They communicate everything to
18 the lawyer, and that they have -- they do not intend to provide
19 any health benefits.

20 THE COURT: The lawyers don't tell their potential
21 clients what the results are?

22 THE WITNESS: If the results are positive, they get
23 -- a letter is sent out notifying the potential client that
24 there is a positive result. In some cases the potential client
25 then -- well, actually, it's not a potential, it's an actual

Brickman - Direct

19

1 client, because before any of the screenings take place you
2 must sign a retainer agreement. That's the beginning of the
3 process, and it's a retainer agreement with the law firm that
4 is sponsoring or paying for the screening. When some of the
5 screen -- those screened have gotten the letters, they've gone
6 to their own doctors and said, you know, what's up? I'm told
7 I'm sick. And their doctors examine them and there's material
8 in the records that I examined where the doctor said, well, you
9 have -- there's nothing wrong with you. But, in one notorious
10 case that person ended up committing suicide out of fear of the
11 consequences, even though his own doctor had told him that
12 there was nothing wrong with him.

13 Q Now Professor, in your report you also refer to a small
14 selection of B Readers. Can you tell me what your research has
15 shown on that?

16 A Yes. A comparative handful of B Readers, approximately
17 five percent of the six to seven hundred B Readers that have
18 been certified by NIOSH are regularly used by plaintiff
19 lawyers, by asbestos lawyers, to read the x-rays. Some of the
20 x-rays are read in the exam mobiles, the B Readers are right on
21 site in the truck -- trailers. In other cases the x-rays are
22 batched and sent to the lawyer, and then the lawyer sends them
23 to the B Reader of choice. So, there are approximately 30, 35
24 B Readers that represent the overwhelming majority of B
25 readings done on behalf of asbestos lawyers. The Manville

Brickman - Direct

20

1 trust publishes the top 20 -- a list of the top 20 and the
2 percentages, and the last list I looked at for the top 20
3 indicated somewhere in excess of 60 percent had been done by
4 these top 20 B Readers.

5 Q In your report you also speak to the administration about
6 PFT tests. Can you tell me what materials you've reviewed in
7 that regard?

8 A Yes. In writing about PFT tests I've reviewed medical
9 literature. I reviewed the AMA guides. I reviewed, obtained a
10 copy of the handbook for PFT testing. In addition I reviewed
11 the testimony of medical experts, such as Dr. Friedman and Dr.
12 Robert Crapo, who was retained by Owens Corning during the
13 Pitts and McNeese litigations to look at the PFT testing. In
14 addition I read the deposition testimony of the screening
15 company principals, of the technicians that they had retained,
16 of the B Readers that were involved in some measure with the
17 screenings and with the PFT test administrations. This is
18 mostly what I looked at in formulating first in terms of
19 accumulating data on what was going on, and in formulating an
20 opinion.

21 Q And what has your research shown with respect to the
22 administration of PFT tests?

23 A My research, independent of the medical reports that I
24 looked at, and some of which I did not have available at the
25 time I wrote my article, indicate that the vast majority of PFT

Brickman - Direct

21

1 tests done by the screening enterprises that I looked at, that
2 I was able to acquire information about, did not meet ATS
3 standards. I later in some sense confirmed my own views when I
4 saw the report by Dr. Robert Crapo, who found that ATS
5 standards had not been followed in 99.9 percent of the cases
6 that he examined, and of course Dr. Friedman's testimony which
7 just preceded mine, which I won't replicate.

8 Q Now, you were in the courtroom when the Owens Corning
9 lawyers, Mr. Leff, Mr. Tucker, and Mr. Snyder testified? Is
10 that right?

11 A Yes, I was.

12 Q And with respect to their testimony on the aggregative
13 techniques such as consolidations and mass consolidations, and
14 the other procedural devices, did you essentially agree with
15 what they had to say?

16 A Yes. I thought that that accorded with my understanding
17 of the role of aggregations in asbestos screenings -- in
18 asbestos claiming, rather. I would point out one -- one -- I
19 don't know if it's a quibble or not, but I -- Judge Weinstein,
20 both in his book on mass torts and in his opinion, stated that
21 in his Court, at least, where there were consolidations and
22 there were a couple of very serious cases, such as
23 mesothelioma, and the 1/0 asbestosis cases which predominated,
24 the outcome of that kind of a consolidation was that the claims
25 of the asbestotics was augmented, that is, those claim values

Brickman - Direct

22

1 were increased, and at the expense of the claim values of the
2 mesothelioma cases. And he raised that in terms of an ethical
3 issue.

4 Q All right. Has your research shown that there's some
5 favored jurisdictions for plaintiffs to file asbestos cases?

6 A Yes. Asbestos cases are filed predominantly in 30 --
7 approximately 30 jurisdictions, or have been filed
8 traditionally in approximately 30 jurisdictions in the United
9 States. So, even within states, for example, Mississippi,
10 which is one of the states which has had large numbers of
11 filings, there are ten or 12 counties in which -- which account
12 for the overwhelming majority of counties. The same would be
13 true in Texas. So, calling these jurisdictions, there are a
14 relatively small number of jurisdictions in the United States
15 which account for the overwhelming majority of asbestos
16 filings.

17 THE COURT: Which I assume convinces everybody that
18 that's because there was an overwhelming amount of asbestos in
19 those 30 locations?

20 THE WITNESS: No, sir. These cases can be filed
21 virtually anywhere in the United States. And my understanding,
22 that is, the conclusions I've reached, is that they are filed
23 in jurisdictions in which case values are higher than other
24 jurisdictions. Indeed, most -- I believe most asbestos claims
25 are not filed in the jurisdictions in which the exposures took

Brickman - Direct

23

1 place.

2 Q Are you aware of any recent judicial actions in states
3 that impact on these procedural devices?

4 A Yes. There have been a variety of recent judicial
5 decisions and implementations that have impacted and will
6 further impact asbestos litigation. First there are a number
7 of deferred dockets and registry devices that Courts are coming
8 up with now to deal with unimpaired claims. Of course, in the
9 MDL proceeding Judge Weiner dismissed all of the claims
10 generated by the mass screenings subject to their being revived
11 if illness actually occurs, and with the statute of limitations
12 told. Most recently deferred dockets for these kinds of cases
13 have been established in Seattle, Washington, in Syracuse, New
14 York, in Madison County, Illinois, and by Judge Helen Friedman
15 in New York City, who is the Judge assigned with responsibility
16 for the asbestos docket in New York City. Judge Friedman's
17 registry or deferred docket is for all unimpaired claims.

18 Q Are you aware of any recent judicial activity with respect
19 to the issue of forum selection in asbestos litigation?

20 A Yes. It has been typical in asbestos litigation to -- as
21 noted, to choose forum which are regarded as more friendly.
22 Some of the ways in which these procedural selections occur is
23 through joinder. In some states it was permissible to -- to
24 join with one properly venued plaintiff. Dozens, hundreds,
25 even thousands of out-of-state plaintiffs to be joined to the

Brickman - Direct

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1 case of that one properly venued plaintiff. Texas allowed
2 this. Mississippi allowed this. Texas no longer allows this,
3 both by Court rule and by legislation.

4 In Mississippi, again by both legislation and Court rule,
5 this is no longer allowed. In fact, in a recent Mississippi
6 Supreme Court case, Harold's Auto Parts v. Mangialardi, the
7 Mississippi Supreme Court referred to this process that had
8 been followed traditionally in Mississippi with regard to
9 asbestos litigation as a perversion of justice, and it said it
10 would no longer allow this.

11 In a very recent case, I believe yesterday, a Mississippi
12 Court in Jones County, where there had been 16,000 asbestos
13 cases filed that were on the docket, gave the plaintiff lawyers
14 30 days in which to produce information with regard to the
15 domicile of the plaintiffs, the injury claimed, where the
16 injury took place, and indicated that under prevailing
17 Mississippi law today he would dismiss all of the claims that
18 were out of state on forum non conveniens ground, and to the
19 extent that there were Mississippi claims, but from other
20 counties he would transfer those claims to the other counties.

21 THE COURT: I believe that this is about the third or
22 fourth time that this information has been spread upon the
23 record. We'll take a ten-minute recess, and I would encourage
24 you to, for heaven's sakes, stop reinventing the wheel.

25 MR. HICKERSON: Yes, Your Honor.